

1 DEVIN DERHAM-BURK, #104353
2 CHAPTER 13 STANDING TRUSTEE
3 P.O. BOX 50013
4 SAN JOSE, CA 95150-0013
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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5**

10 **IN RE:**

11 MARGARITA HERNANDEZ
12 MUNOZ

CHAPTER 13 CASE NO. 08-53270 RLE

**MOTION TO DISMISS PRE-
CONFIRMATION PURSUANT TO
11 U.S.C. §1307(c)(1)**

Hearing Date: November 12, 2009

Hearing Time: 2:00 p.m.

Judge: Roger L. Efremsky

Place: U.S. Bankruptcy Court

280 S. First St., Room 3099

SAN JOSE, CA 95113

17 Debtor(s)

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20 Devin Derham-Burk, Chapter 13 Standing Trustee (hereafter "Trustee") moves this Court
21 for an Order of Dismissal of the above case pursuant to 11. U.S.C. §1307(c)(1).
22

23 **REQUEST FOR JUDICIAL NOTICE**

24 Pursuant to FED. R. EVID. 201 as incorporated by FED. R. BANKR. P. 9017, the Trustee
25 respectfully requests that this Court take judicial notice of the Trustee's objection to
26 confirmation on file herein, [Docket #48] a copy of which is attached as Exhibit A.
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FACTUAL BACKGROUND

1. The Chapter 13 petition was filed on June 20, 2008. [Docket #1]

2. Devin Derham-Burk is the duly appointed Chapter 13 Trustee in this matter.

3. The Trustee has filed an objection to confirmation [Docket #48] which has not been resolved. *See* Exhibit A. The point raised in the Trustee's objection prevent her from recommending confirmation of the Chapter 13 plan.

4. The Trustee's objection to confirmation has been sustained by the Court at an earlier hearing.

5. The creditors hereunder are experiencing an unreasonable delay by the debtor(s) that is prejudicial pursuant to 11 U.S.C. §1307(c)(1).

ARGUMENT

11 U.S.C. §1307(c) permits the Trustee to bring a motion to dismiss a Chapter 13 case for cause if it is in the best interests of the creditors and the estate. The Court can consider any "cause" including, but not limited to, the enumerated grounds in subsection (c). Section 1307(c)(1) permits dismissal for "unreasonable delay by the debtor that is prejudicial to creditors." The Trustee submits that this case has been pending for thirteen (13) months without resolution of all of the Trustee's objection points. This delay is unreasonable and is preventing the Trustee from being able to recommend confirmation and disburse funds to creditors in the case. In light of the lack of prosecution in this case, the Trustee submits that the case should be dismissed.


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2 WHEREFORE, Devin Derham-Burk, the Standing Chapter 13 Trustee, respectfully
3 requests that the Court dismiss this case without prejudice.
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5 Respectfully submitted,
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7
8 October 19, 2009

9 
10 /s/ Devin Derham-Burk
11 Devin Derham-Burk
12 Chapter 13 Standing Trustee
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CHAPTER 13 STANDING TRUSTEE
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Telephone: (408) 354-4413
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

MARGARITA HERNANDEZ MUNOZ

Debtor(s)

Chapter 13
Case No. 08-5-3270 RLE

Third Amended
TRUSTEE'S OBJECTION TO
CONFIRMATION WITH CERTIFICATE OF
SERVICE

Pre-Hearing Conference Date: August 20, 2009
Pre-Hearing Conference Time: 2:00 pm
Place: 280 S. 1st Street
San Jose, CA Room 3099
Judge: Efremsky

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 0% Plan for the following reasons:

1. The Plan is in violation of 11 U.S.C. §1322(d). The bar date for filing claims has passed, and the term is approximately 138 months due to an unscheduled priority claim in the amount of \$20,885.15 filed by the Franchise Tax Board. The Trustee is unable to recommend confirmation of the debtor's plan until the claim is provided for or the Franchise Tax Board has filed an amended claim.

Dated: August 10, 2009

/S/ Devin Derham-Burk

Chapter 13 Trustee

EXHIBIT A

Trustee's Obj to Confirmation 08-5-3270 rle

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CERTIFICATE OF SERVICE BY MAIL

I declare that I am a citizen of the United States, over the age of 18 years, not a party to the within cause; my business address is 983 University Ave. C-100, Los Gatos, California 95032. I served a copy of the within Third Amended Trustee's Objection to Confirmation by placing same in an envelope in the U.S. Mail at Los Gatos, California on August 11, 2009.

Said envelopes were addressed as follows:

Margarita Hernandez Munoz
2872 Plumas Dr
San Jose, CA 95121

Gold & Hammes
1570 The Alameda #223
San Jose, CA 95126

/S/ Karen B. Huston
Office of Devin Derham-Burk, Trustee

EXHIBIT

A

2 of 2

Trustee's Obj to Confirmation 08-5-3270 rlc